UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANWAR ALKHATIB,
Plaintiff,

-against-

Case No. 13-CV-2337 (ARR) (SMG)

NEW YORK MOTOR GROUP LLC,
PLANET MOTOR CARS, INC.,
MAMDOH ELTOUBY, AND
NADA SMITH
Defendants.

SHAHADAT TUHIN
Plaintiff,

-against-

Case No. 13-CV-5643 (ARR) (SMG)

NEW YORK MOTOR GROUP LLC,
PLANET MOTOR CARS, INC.,
MAMDOH ELTOUBY, AND
NADA SMITH
Defendants.

SIMON GABRYS,
Plaintiff,

-against-

Case No. 13-CV-7290 (ARR) (SMG)

NEW YORK MOTOR GROUP LLC,
PLANET MOTOR CARS, INC.,
MAMDOH ELTOUBY, AND
NADA SMITH
Defendants.

BORIS FREIRE, et al,
Plaintiffs,

-against-

Case No. 13-CV-7291 (ARR) (SMG)

NEW YORK MOTOR GROUP LLC,
PLANET MOTOR CARS, INC.,
MAMDOH ELTOUBY, AND
NADA SMITH
Defendants.

ZHENG HUI DONG,
Plaintiff,

-against-

Case No. 14-CV-2980 (ARR) (SMG)

NEW YORK MOTOR GROUP LLC,
PLANET MOTOR CARS, INC.,
MAMDOH ELTOUBY, AND
NADA SMITH
Defendants.

NASRIN CHOWDHURY,
Plaintiff,

-against-

Case No. 14-CV-2981 (ARR) (SMG)

NEW YORK MOTOR GROUP LLC,
PLANET MOTOR CARS, INC.,
MAMDOH ELTOUBY, AND
NADA SMITH
Defendants,

TAREQUE AHMED
Plaintiff,

-against-

Case No. 15-CV-0284 (ARR) (SMG)

NEW YORK MOTOR GROUP LLC,
PLANET MOTOR CARS, INC.,
MAMDOH ELTOUBY, AND
NADA SMITH
Defendants.

YSABEL BANON,
Plaintiff,

-against-

Case No. 15-CV-4691 (ARR) (SMG)

NEW YORK MOTOR GROUP LLC,
PLANET MOTOR CARS, INC.,
MAMDOH ELTOUBY, AND
NADA SMITH
Defendants.

CHEA SUNG PARK,
Plaintiff,

-against-

Case No. 15-CV-5374 (ARR) (SMG)

NEW YORK MOTOR GROUP LLC,
PLANET MOTOR CARS, INC.,
MAMDOH ELTOUBY, AND
NADA SMITH
Defendants.

[JOINT][•] PRETRIAL ORDER

Pursuant to the Individual Practices and Rules of Judge Allyne R. Ross and the Court's Order dated January 27, 2017, Plaintiff hereby submits this [Joint] Pretrial Order:

I. Caption

The full caption in for the nine consolidated matters is set forth above. Pursuant to the Parties' stipulation of February 23, 2017, which was entered by the Court on February 27, 2017 (Dkt. No. 154), all filings for all actions are to be filed solely on the docket sheet for the earliest filed case, *Alkhatib v. New York Motor Group, LLC, et al.*, No. 13-cv-2337.

II. Trial Counsel

A. Plaintiffs' Trial Counsel:

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[•] Plaintiffs prepared this Pretrial Order and shared it with Defendants' counsel last week. However, for the reasons set forth in a letter Plaintiffs has filed the same day as this Pretrial Order, Defendants have not partaken in the drafting of this document.

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B. Defendants' Trial Counsel

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III. Jurisdiction

This is a civil action for damages pursuant to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq*., and the Truth in Lending Act, 15 U.S.C. § 1601, *et seq*. Plaintiffs further invoke pendent jurisdiction of this Court to consider four claims arising under state law: common law fraud, General Business Law § 349, General Business Law § 350, and negligent hiring and retention.

IV. Jury or Bench Trial

Plaintiffs' complaints include a jury demand and Plaintiffs request a jury trial.

V. Consent to Trial by Magistrate Judge

The parties do not consent to a trial before the Magistrate Judge.

VI. Trial Memoranda

Plaintiffs have attached their Pretrial Memoranda as Exhibit A to this Joint Pretrial Order.

Defendants do not file a Pretrial Memorandum here, and accordingly Exhibit B is left blank.

VII. Damages and Relief

A. Plaintiffs' Statement

Plaintiffs seek the following relief:

- Common Law Fraud: Plaintiffs seek their actual, out-of-pocket damages resulting from the defendants' fraud, as well as punitive damages in an amount to be determined by the jury. Precise out-of-pocket damages will be proven at trial. Below are estimates as to each Plaintiff's approximate out-of-pocket damages:

  - **Anwar Alkhatib**: Mr. Alkhatib asserts $10,200 in out-of-pocket damages, consisting of the amount he was coerced and fraudulently induced to pay above what had been represented to him at the time he made a $10,000 down payment. His damages further consist of $2,700 for an insurance policy (which he never received coverage from) that he was fraudulently induced to purchase.

  - **Shahadat Tuhin**: Mr. Tuhin asserts $10,216.86 in out-of-pocket damages, consisting of his $2,630 cash deposit, $866.86 in monthly payments, $320 in towing costs, $3,750 in storage costs, and $2,650 in alternate transportation. He asserts an additional $21,677.10 in actual damages for the inflated sum of the contract, as well as damages for emotional distress in an amount to be determined by the jury.

  - **Simon Gabrys**: Mr. Gabrys asserts out-of-pocket damages of $12,350.76. This sum consists in part of the of $10,627.12 difference between the size of the loan (including interest payments) to which Mr. Gabrys agreed and the size of the loan (including interest payments) as recorded in the Retail Installment Contract assigned to M&T Bank. Mr. Gabrys further suffered an out-of-pocket loss of $1,673.64 (plus a $50 cancellation fee) based on what he could not recover on the service contract he was fraudulently induced to purchase.

  - **Boris Freire and Miriam Osario**: Mr. Freire and Ms. Osario assert out-of-pocket damages of $52,000, consisting of (i) the inflated amount they owed pursuant to the Retail Installment Agreement assigned to Santander Consumer USA, Inc. ("SCUSA") over what they agreed to and (ii) phony insurance and refinancing projects they were fraudulently induced to purchase.

  - **Zheng Hui Dong**: Ms. Dong asserts out-of-pocket damages of $38,000, consisting of the amount of money recorded in the forged Retail Installment Agreement assigned to SCUSA that was above what she agreed to pay at the dealership, when she paid $13,500 in cash and believed she had purchased a vehicle out right. Ms. Dong's claimed out-of-pocket damages also include fees incurred when SCUSA repossessed her vehicle.

- **Chowdhury**: Ms. Chowdhury asserts out-of-pocket damages of $10,991.15. This amount consists of the inflated sum in the contract that was assigned to M&T Bank above what Ms. Chowdhury agreed to at the dealership. It also credits (and subtracts) partial reimbursements Ms. Chowdhury's son, Shehad Kazi, obtained from the dealership totaling $5,038.01. It also consists of $1,273.25 she was unable to recoup from a service contract the dealership fraudulently induced her to obtain.

- **Tareque Ahmed**: Mr. Ahmed asserts damages of $11,000, consisting of the amount he repaid SCUSA that was above and beyond what he agreed to pay when entering into the Retail Installment Agreement. This sum further includes post-repossession deficiencies demanded of Mr. Ahmed by the bank after his car was repossessed and $680 he paid Mr. Estrada to "fix" his problems.

- **Ysabel Banon**: Ms. Banon asserts out-of-pocket damages of $34,480, consisting of the difference between the agreed-upon purchase price of the vehicle had she used cash $32,500, which she wanted to use to purchase the vehicle but was told she could not, and the amount that Ms. Banon would have to pay if she paid her loan in full.

- **Chea Park**: Mr. Park asserts out-of-pocket damages of $21,277.30, consisting of payments he made to the bank before his car was repossessed above the amount he agreed to pay, post-repossession deficiencies claimed by the bank, and fees he had to pay to reclaim his car after it was repossessed the first time.

- Civil RICO: Plaintiffs seek treble their actual damages – consisting of their out-of-pocket damages and compensation for other harms suffered as a result of defendants' conduct – and attorneys' fees.

- GBL § 349: Plaintiffs seek their actual damages plus $50. Plaintiffs also seek attorneys' fees.

- GBL § 350: Plaintiffs seek their actual damages plus $500. Plaintiffs also seek attorneys' fees.

- Negligent Hiring: Plaintiffs seek actual and punitive damages.

- Truth in Lending Act: Pursuant to 15 U.S.C. § 1640(a)(2)(iii), Plaintiffs seek the greater of $500 or double the amount of their finance charges. Plaintiffs contend that the ordinary $5,000 cap should not apply in this case because defendants engaged in a pattern and practice of Truth in Lending Act violations. *See* 15

U.S.C. § 1640(a)(2)(iii). Plaintiffs also seek costs and attorneys' fees.

VIII. Stipulations

The parties' Pretrial Stipulations are attached as Exhibit C to this Joint Pretrial Order. These stipulations were negotiated and finalized between the parties the week of February 20-24, 2017

IX. Witnesses

A. Plaintiff's Witnesses

Plaintiffs intend to call the following witnesses for their case in chief:

1. Anwar Alkhatib: Plaintiff Anwar Alkhatib will testify that he was defrauded by defendants in December 2012. Mr. Alkhatib will testify that, after placing a down payment of nearly $10,000 in cash and offering to pay cash for the full purchase price of a car, Mr. Alkhatib's previous car was taken by the dealership and he was told that he would have to forfeit half of his sizeable deposit unless he agreed to over $7,000 in additional financing charges. Mr. Alkhatib will further testify that he was fraudulently induced to purchase a $3,000 service contract. His address is: 15 William Street Little Ferry, NJ 07643.

2. Shahadat Tuhin: Plaintiff Shahadat Tuhin will testify that, in June 2013, he was fraudulently induced by defendants into financing a car that he sought to purchase in cash, into purchasing a $3,000 service contract he did not want, and into being obligated for $21,677.10 more than he had agreed to. He will further testify that when he immediately attempted to rescind the contract and return the vehicle, Mr. Estrada and Nada Smith refused to allow him to do so and repeated the misrepresentations about the financing terms, inducing him into making monthly payments. He will testify that, as a result, he suffered monetary damages and emotional distress. His address is: 70-07 34th Avenue, Apt. 3B, Jackson Heights, NY 11372

3. Raquibal Hassan: Mr. Hassan is Mr. Tuhin's friend. He will testify that he accompanied Mr. Tuhin to New York Motor Group several times and witnessed the misrepresentations by Mrs. Smith and Mr. Estrada. His address is: 83-15 170th Street, Jamaica NY 11432.

4. Sgt. Novaidul Neon: Sgt. Neon is Mr. Tuhin's friends. He will testify that he accompanied Mr. Tuhin to New York Motor Group several times and witnessed the misrepresentations by Mrs. Smith and Mr. Estrada. His address is: 95 Louisa Street, Brooklyn, NY 11218.

5. Simon Gabrys: Plaintiff Simon Gabrys will testify that he was fraudulently induced to purchase a service contract that was (i) not necessary and (ii) did not cover what it was

supposed to. He will further testify that the Retail Installment Contract assigned to M&T Bank reflected a loan amount of more than $10,000 over what he agreed to at the dealership. His address is: 244 Nassau Avenue Brooklyn, NY 11222.

6. Nasrin Chowdhury: Plaintiff Nasrin Chowdhury will testify that she visited New York Motor Group in January 2013 to purchase a Nissan Murano for $13,500. She will testify that she was fraudulently told that, to qualify for better financing, she had to purchase unnecessary products such as a service contract, and she was fraudulently told that she could cancel these items before paying for them in full. Ms. Chowdhury will testify that Mr. Estrada instructed her to sign a Retail Installment Contract without the numbers filled in. She will testify that she later learned that he filled in numbers that were very different than what she agreed to. Her address is: 190-08 104th Avenue St. Albans, NY 11412.

7. Shehad Kazi: Mr. Kazi is Ms. Chowdhury's son. He will testify about accompanying his mother to the dealership the day that she purchased her Nissan Murano. He will testify about returning to the dealership numerous times to complain to Ms. Eltouby and Mr. Estrada about the sums in the retail installment contract assigned to M&T Bank. He will further testify as to the partial refund he received. His address is: 190-08 104th Avenue St. Albans, NY 11412.

8. Boris Freire: Plaintiff Boris Freire will testify that, after placing a $7,500 down payment for a car advertised at $14,900, he was told three days later that he would have to pay an additional amount of over $10,000 consisting of fees and a $5,500 insurance package for insurance coverage he never received. Mr. Freire also paid $3,000 to refinance the contract, but the dealership never provided refinancing and instead pocketed the $3,000. His address is: 396 Kip Street Teaneck, NJ 07666.

9. Miriam Osorio: Plaintiff Miriam Osorio will testify that defendants fraudulently represented to her that they would obtain refinancing for her and Mr. Freire's vehicle from Bank of America is she and Mr. Freire paid $3,000. Ms. Osorio will testify that she paid $3,000 but never obtained the promised refinancing. Her address is: 396 Kipp Street Teaneck, NJ 07666.

10. Zheng Hui Dong: Plaintiff Zheng Hui Dong will testify that after she paid $13,500 in cash for a vehicle and believed she had purchased it outright, she was later informed that SCUSA would attempt to collect an additional $38,000 from her based on a forged Retail Installment Contract. Ms. Dong will also testify that SCUSA repossessed her vehicle even after it was on notice of the defendants' fraudulent activity, thereby causing her additional loss. Her address is: 2636 University Ave Bronx, NY 10468.

11. Tareque Ahmed: Plaintiff Tareque Ahmed will testify that he visited the dealership in January 2013 to purchase a Honda Civic. Mr. Ahmed will testify as to delays in receiving his paperwork upon purchasing the vehicle and interactions at that time with Ms. Eltouby. He will testify as to months of fighting efforts by SCUSA to compel him to

repay substantially more than he agreed to at the Dealership, including having his car repossessed. He will also testify as to protests he took part in outside the dealership, a pro se action he commenced and interactions with the Queens District Attorneys' office. His address is: 31-78 34th Street Astoria, NY 11106.

12. Ysabel Banon: Plaintiff Ysabel Banon will testify that she informed the Dealership that she wanted to purchase a vehicle with cash, but was informed that she was required to obtain financing. She will testify that she agreed to take out a loan for $5,000 but later learned from M&T that her loan was recorded as $36,739.74 at 5.98%, requiring her to repay $43,804.08 over the course of six years. Ms. Banon will testify that she complained to the dealership and to law enforcement authorities, as well as M&T Bank and Detective Driscoll of the NYPD. Her address is: 444 Manhattan Avenue, 1F New York, NY 10026.

13. Chea Sung Park: Plaintiff Chea Sung Park will testify as to his interactions with Mr. Eltouby when he went to purchase a vehicle in April 2013, and how Mr. Eltouby directed him to speak with Mr. Estrada about financing. He will testify that SCUSA tried to enforce terms on him that were dramatically different than what he agreed to at the dealership, leading to the repossession of his vehicle on multiple occasions. He will testify as to many instances he returned to the dealership with friends to complain. His address is: 143-06 Cherry Ave. Apt 3B Flushing, NY 11355.

14. Nube Fernandez: Ms. Fernandez will testify that, in July 2013, employees of New York Motor Group falsely informed her that she was required to obtain financing in order to purchase a vehicle. She will testify that Mr. Estrada lied to her about the meaning of the terms on the financing documents and lied that the loan would be fully paid off after five monthly payments. She will testify that, as a result, she became indebted for over $13,000 more than she had agreed. She will also testify to her role in the Queens District Attorney's Office's investigation of Julio Estrada. Her address is: 9906 43rd Avenue, 1st Floor, Corona, NY 11368.

15. Hanan Faiz: Ms. Faiz will testify that in June 2013, she was employed by New York Motor Group, witnessed the fraudulent scheme firsthand, and communicated with several victims. She will speak to Mamdoh Eltouby's and Nada Smith's personal involvement in the scheme. Her address is still being determined.

16. Detective Edwin Driscoll: Detective Driscoll will testify about his investigations of Julio Estrada, which resulted in his recent arrests while employed by New York Motor Group, as well as his previous arrest while employed by Auto Palace. He will testify to the fraudulent practices that occurred at New York Motor Group and Planet Motor Cars. His address is: c/o Queens District Attorney's Office, 125-01 Queens Blvd, Kew Gardens, NY 11415.

17. Julio Estrada will testify about Mamdoh Eltouby's and Nada Smith's knowledge of and participation in his, New York Motor Group's, and Planet Motor Cars' business practices. He will testify that Ms. Smith worked alongside him in all of his interactions with customers. He will testify that Mr. Eltouby was aware of his arrest record and constantly watched him on the businesses' recorded surveillance system, solely in order to protect himself from being victimized and not to prevent any crimes against the customers. His address is: Lincoln Correctional Facility, 31-33 West 110th Street, New York, NY 10026-4398.

18. Matthew Wong is a consumer who purchased an automobile from New York Motor Group and Planet Motor Cars in March 2013. Plaintiff may call Mr. Wong to testify about his interactions with the Dealership's finance manager, Julio Estrada a/k/a John Dos Santos, Nada Eltouby, Mamdoh Eltouby and other Dealership agents and employees, and/or complaints that he made. Mr. Wong's address is 133 Pitt Street, #1001, New York, NY 10002. His phone number is (917) 498-0618.

19. Luiz Ramirez is a consumer who purchased a vehicle from New York Motor Group and Planet Motor Cars in or around January 2014. Plaintiff may call Mr. Ramirez to testify about his interactions with the Dealership's finance manager, Julio Estrada a/k/a John Dos Santos, Nada Eltouby, Mamdoh Eltouby and other Dealership agents and employees, and/or complaints that he made. Mr. Ramirez's address is 136 Reid Street, Elizabeth, NJ 07201. His phone number is (908) 977-2020.

20. Roseann Evans is a consumer who purchased a vehicle from New York Motor Group and Planet Motor Cars in or around February 2013. Plaintiff may call Ms. Evans to testify about her interactions with the Dealership's finance manager, Julio Estrada a/k/a John Dos Santos, Nada Eltouby, Mamdoh Eltouby and other Dealership agents and employees, and/or about complaints that she made. Her phone number is (718) 441-5403. Her address is 8375 Woodhaven Blvd., Woodhaven, NY 11421.

21. Dilshod Zaripov is a consumer who purchased a vehicle from New York Motor Group and Planet Motor Cars in February 2013. Plaintiff may call Mr. Zaripov to testify about his interactions with the Dealership's finance manager, Julio Estrada a/k/a John Dos Santos, Nada Eltouby, Mamdoh Eltouby and other Dealership agents and employees, and/or his interactions with representatives of Santander Consumer USA, Inc. Mr. Zaripovs contact information is as follows: Dilshod Zaripov, 646 Argyle Road, Brooklyn, NY 11230.

22. Igor Voloshko is a consumer who purchased a vehicle from New York Motor Group and Planet Motor Cars in or around March 2013. Plaintiff may call Mr. Voloshko to discuss his interactions with the Dealership's finance manager, Julio Estrada a/k/a John Dos Santos, Nada Eltouby, Mamdoh Eltouby and other Dealership agents and employees, and/or complaints that he made. Discovery produced to Plaintiff by M&T Bank indicates that Mr. Voloshko's phone number is (646) 290-0776 and his address is 34 Tudor Terrace, Brooklyn, NY 11224.

23. Humphrey Okeke: Mr. Okeke will testify as to an instance when he was defrauded by the defendants in 2010 and later filed a complaint with the Better Business Bureau. Mr. Okeke

will testify that the defendants added $2,000 to his financing agreement (money which he did not borrow) after he signed it. His address is 58-42 206th Street, Oakland Garden, NY 11364.

24. Kerrian Latte: Mr. Latte will testify to an instance in 2012 when she was defrauded by defendants. In particular, she borrowed approximately $10,000 to purchase a vehicle, but defendants recorded a loan of nearly $17,000. She made numerous trips to visit defendants to address this and other issues that arose out of her purchase of a vehicle on defendants' lot. Her address is 838 High Ridge Road, Stamford CT 06905.

B. Defendants' Witnesses

Defendants have not designated witnesses.

X. Deposition Designations

Plaintiffs' deposition designations are attached as Exhibit D (parts 1-20) to this Order. Defendants have not made deposition designations and accordingly Exhibit E is left blank.

Defendants have objected to the designation of portions of Julio Estrada's deposition. Plaintiffs' position is that an assessment as to the availability of Mr. Estrada – who has been incarcerated for much of the past several years – to testify must be made closer to the time of trial.

XI. Exhibits

Plaintiffs' exhibit list is attached as Exhibit F.

Defendants have not submitted an exhibit list.

XII. Motions *In Limine*

Concurrent with the filing of this motion, Plaintiffs have filed a Motion for Spoliation Sanctions.

XIII. [Joint] Request To Charge

Plaintiffs' [Joint] Request To Charge is attached as Exhibit G to this Order. Defendants have not submitted proposed jury instructions.

Respectfully submitted,

Dated: New York, NY
February 27, 2017

/s/ Patricia Kakalec

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